Ordinance No. 123726

Council Bill No. 117296

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to purchase certain real property located at 10042 Rainier Avenue S., Seattle, Washington, King County Parcel Identification No. 807300-0538; to execute, accept and record deeds and other necessary and convenient documents and agreements on behalf of the City.

Related Legislation File:

Date Introduced and Referred: Sept. 19, 2011	To: (committee): Seattle Public Utilities and Neighborhoods
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 10.3.11	Date Presented to Mayor: 10.4.11
Date Signed by Mayor: Oct. 12, 2011	Date Returned to City Clerk: Oct. 12, 2011
Published by Title Only ✓ Published in Full Text	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by:

Committee Action:

Date	Recommendation	Vote
9/27/11	Approve	3 (MOB, BH, RC) – 0

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
10.3.11	Passed	9-0

LAW DEPARTMENT

Julie Crittenden
SPU 10042 Rainier Ave South ORD
September 8, 2011
Version 3

ORDINANCE 123726

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to purchase certain real property located at 10042 Rainier Avenue S., Seattle, Washington, King County Parcel Identification No. 807300-0538; to execute, accept and record deeds and other necessary and convenient documents and agreements on behalf of the City.

WHEREAS, the City plans to implement a major creek habitat and flooding improvement project along lower Taylor Creek and the adjacent shoreline of Lake Washington in southeast Seattle on City-owned properties at 10032-10038 Rainier Ave S. (the "Proposed Project"); and

WHEREAS, the Proposed Project will create open space to benefit Seattle residents and improve aquatic habitat for fish and wildlife in southern Lake Washington; and

WHEREAS, the adjacent property at 10042 Rainier Avenue S. also contains Taylor Creek and abuts a portion of the creek delta; and

WHEREAS, acquisition of 10042 Rainier Avenue S. provides opportunities to further enhance open space and creek and shoreline habitat; and

WHEREAS, the owner of 10042 Rainier Ave S. is amenable to selling the property commonly known as 10042 Rainer Avenue S. and Seattle Public Utilities would like to purchase said property; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities, or his designee (hereinafter the "Director"), is authorized to execute on behalf of The City of Seattle an agreement to purchase the following parcel of real property, as legally described in Attachment 1 hereto: 10042 Rainier Avenue S., King County parcel number 807300-0538, substantially in the form of the Purchase and Sale Agreement attached hereto as Attachment 2. The Director is further authorized to execute, accept and record deeds and other necessary and convenient documents and agreements on behalf of the City related to the purchase of said property.

Section 2. The property shall be placed in the jurisdiction of Seattle Public Utilities.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 3rd day of October, 2011, and signed by me in open session in authentication of its passage this 3rd day of October, 2011.

President _____ of the City Council

Approved by me this 12th day of October, 2011.

Michael McGinn, Mayor

Filed by me this 12th day of October, 2011.

For Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Legal Description of Property
Attachment 2 – Purchase and Sale Agreement

ATTACHMENT 1

LEGAL DESCRIPTIONS

1. King County Tax Account No. 807300-0538; 10042 Rainier Avenue South

Parcel A:
Lot A, City of Seattle Short Plat Number 8406267, recorded under Recording Number 8605021031, in King County, Washington. Together with second class shorelands adjoining.

Parcel B:
A non-exclusive easement for ingress and egress as delineated on City of Seattle Short Plat Number 8406267, recorded under Recording Number 8605021031, in King County, Washington.

ATTACHMENT 2

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made by and between _____ (the "Seller") and The City of Seattle, a municipal corporation, acting by and through its Seattle Public Utilities Department ("Buyer"). This Agreement shall be effective the date it has been signed by both Seller and Buyer as evidenced by the last date appearing under their respective signatures (the "Effective Date").

1. SALE OF PROPERTY

Subject to the terms of this Agreement, Buyer Shall purchase and Seller shall convey to Buyer on the Closing Date that certain real property, improvements, and appurtenances thereon known as _____, Seattle, situated in King County, Washington, legally described in Exhibit A attached to this document together with all rights appurtenant thereto (the "Property"). The property is being conveyed voluntarily by Seller without threat of condemnation.

2. PURCHASE PRICE; PAYMENT

The total purchase price for the Property is _____ Dollars ($ _____).

2.1 **Earnest Money Deposit.** Within ten (10) working days following the Effective Date, Buyer will deposit in escrow with Pacific Northwest Title Company of Washington, (215 Columbia Street, Seattle) ("Closing Agent"), a copy of this Agreement and Buyer's earnest money deposit in the amount of _____Dollars ($_____) ("Deposit"), in the form of a check made payable to the Closing Agent to be held in trust for this transaction. The Closing Agent shall hold the Deposit and apply it to the Purchase Price at closing, unless forfeited or refunded as provided below.

2.2 **Balance of Purchase Price.** The balance of the Purchase Price: _____Dollars ($_____) in cash at closing will be paid by Buyer.

3. CONDITION OF TITLE; DEED

3.1 **Title Insurance.** Buyer shall obtain an owner's standard coverage policy of title insurance, issued through Pacific Northwest Title Company ("PNTC") describing the Property, listing the Buyer as the prospective insured, and showing as the policy amount the Purchase Price (the "Title Policy"). Seller agrees to take all reasonable steps to remove any defects or cause the Title Company to insure over said defects at Closing. If Seller is unable, in the exercise of due diligence, to cure or insure over said defects on or before the Closing date, Buyer, may, at Buyer's election, extend Closing for an additional 60 days, to permit Seller to cure such

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remaining defects, terminate this Agreement and recover its Deposit from Closing Agent, or exercise any other right Buyer has under this Agreement.

3.2 **Deed.** At Closing, the Seller shall execute and deliver to Buyer a Statutory Warranty Deed conveying title to the Property to the Buyer free and clear of all defects or encumbrances except for any exceptions waived by the Buyer. A condition precedent to Buyer's completing the purchase of the Property shall be the willingness of the PNTC to issue, upon payment of the PNTC's regularly scheduled premium, an ALTA owner's standard coverage title insurance policy in the amount of the Purchase Price, showing title to the Property vested in Buyer in fee simple, subject only to the preprinted exceptions commonly contained in an owner's policy.

4. FEASIBILITY PERIOD

Buyer shall have until _____, 2011 (i) to determine, in its sole discretion, the suitability of the Property for Buyer's intended use and (ii) for the Seattle City Council by ordinance to authorize and approve the acquisition of the Property ("Feasibility Period"). If Buyer fails to deliver to Seller written notice prior to the end of the Feasibility Period that Buyer has determined the Property to be suitable and the Seattle City Council has by ordinance approved acquisition of the Property, then the Property shall be deemed unsuitable for Buyer's purposes, this Agreement shall terminate, Closing Agent shall return the Deposit along with any accrued interest to Buyer, and Seller and Buyer shall have no further obligations or liability under this Agreement. Seller and Buyer agree that the Feasibility Period may be extended by mutual agreement of the parties through written amendment to this Agreement signed by both Seller and Buyer.

5. RIGHT OF ENTRY

Seller grants to Buyer and its employees, agent and contractors, the right to enter upon the Property from time to time during the Feasibility Period, for the purpose of conducting such inspections, investigations and studies as Buyer may reasonably deem necessary or appropriate and at Buyer's expense, in order to determine the feasibility of purchasing the Property. Buyer agrees to restore to the Property to substantially the same condition as existed prior to entry any portion of the Property disturbed by Buyer's investigation or studies.

6. RISK OF LOSS

Seller shall bear the risk of loss of or damage to the Property until the date of closing. In the event of destruction of vegetation or other material loss of or damage to the Property prior to closing, Buyer may terminate this Agreement by giving notice of termination to Seller and Closing Agent unless such loss or damage is caused by the Buyer. Upon such notification,

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Closing Agent shall refund the Deposit to Buyer and the parties shall have no further rights or obligations in connection with this Agreement.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 **Buyer's Representations and Warranties**. Buyer represents and warrants to Seller at the date of execution of this Agreement and the date of closing that:

(a) Buyer is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington and has the power to own its property and assets.

(b) The individual(s) executing this agreement on behalf of Buyer is authorized to do so by appropriate legislative enactment.

7.2 **Seller's Representations and Warranties**. Seller represents, warrants and covenants to Buyer at the date of execution of this Agreement and the date of closing that:

(a) Seller is the owner of the Property, subject to any liens, encumbrances and interests shown on the Title Report.

(b) Seller has full power and authority to execute this Agreement and perform Seller's obligations;

(c) Prior to closing, Seller will remove all debris and personal property located on the Property (if any), at Seller's cost and expense.

(d) There is no pending or threatened litigation that would adversely affect the Property or Buyer's ownership thereof after Closing.

(e) There are no covenants, conditions, restrictions, or contractual obligations of Seller that will adversely affect Buyer's ownership of the Property after Closing or prevent Seller from performing its obligations under the Agreement, except as disclosed in the Title Report.

(f) Seller represents that it has had no dealing with any real estate brokers or agents in connection with the negotiation of this transaction. Seller shall indemnify and hold Buyer harmless from and against any and all liability and costs which the other may suffer in connection with real estate brokers claiming by, through, or under that party seeking any commission, fee or payment in connection with this transaction.

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(g) Seller has not entered, and prior to closing shall not enter, into any contract or agreement, either written or oral, concerning cutting, removal, topping or other disturbance or destruction of vegetation on the Property.

8. CONDITION OF PROPERTY

Buyer acknowledges and agrees that it is relying solely on its inspection and investigation of the Property, and accepts the Property "As-Is," "Where-Is" in its present condition. Buyer acknowledges and agrees that the Seller has made no warranty or representation of any kind, oral or written, expressed or implied, with respect to any condition of the Property, including without limitation, the habitability, tenantability, or fitness for a particular purpose of the Property, the presence or absence of any hazardous substances, wastes or materials as defined by State, Federal or Local law.

9. CLOSING AND POSSESSION

9.1 **Closing Costs.** Buyer and Seller shall each pay their own attorneys' fees incurred in connection with negotiating and consummating this transaction Buyer will pay real estate excise taxes, the premium for the insurance policy, the cost of recording the Statutory Warranty Deed from Seller, and the Closing Agent's escrow fee.

9.2 **Prorations.** Real property taxes, assessments, Surface Water Management charges, Conservation Service Charges, and utility charges constituting liens against the Property, all for the year of Closing, shall be prorated as of the date of Closing. Any documentary transfer tax, real estate excise tax, or other similar tax imposed in accordance with the requirements of lawful authority shall be paid by Seller.

9.3 **Time for Closing.** This sale will be closed in the office of the Closing Agent on a date mutually agreed upon by the Buyer and Seller, subject to and after authorization through ordinance passed by the Seattle City Council no later than _____, 2011. Seller and Buyer agree that the closing date may be extended by written amendment to this Agreement signed by both parties. Buyer and Seller will deposit in escrow with the Closing Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. As used in this Agreement, "closing" or "date of closing" means the date on which all appropriate documents are recorded and proceeds of sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available to disbursement to Seller.

9.4 **Possession.** Buyer shall be entitled to possession of the Property at time of closing. Seller shall deliver the Property to Buyer on the Closing Date in substantially the same physical condition as of the date of Seller's execution of this Agreement, excepting casualty and ordinary

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wear and tear. Seller shall remove all debris and personal property (if any) located on the Property at Seller's cost and expense as of the Closing Date.

10. DEFAULT

If either party to this Agreement fails or refuses to perform or satisfy a material obligation under this Agreement, that party shall be in default and the non-defaulting party may elect from the following remedies.

10.1 **Seller in Default**. In the event that Seller breaches any of its obligations under this Agreement, Buyer shall have all remedies available to it at law or in equity, including, without limitation, the right to seek specific performance.

10.2 **Buyer in Default**. If Buyer fails, without legal excuse, to complete the purchase of the property, the Deposit made by Buyer shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure.

11. BUYER'S CONDITIONS TO CLOSING

11.1 It is a condition to Buyer's obligation to proceed to Closing that, as of the Closing Date

(a) all of Seller's representations and warranties set forth in Section 7.2 are true and correct;

(b) Seller has performed all of its covenants hereunder;

(c) no moratorium, statute, order, regulation, ordinance or judgment of any court or governmental agency has been enacted, adopted, issued or initiated that would materially and adversely affect the current use of the Property or any portion thereof;

(d) the Property is delivered to Buyer at Closing free and clear of any occupants or rights to possession;

(e) the Title Company is prepared to issue the Title Policy to the Buyer;

(e) Seller has delivered all documents listed in Section 13;

(f) all other conditions to Buyer's obligations to proceed to Closing that are set forth in this Agreement have been satisfied.

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11.2 If any condition to Buyer's obligations hereunder has not been fulfilled, including any condition not set forth in this Section 11, Buyer shall have no obligation to proceed to Closing.

12. SELLER'S CONDITIONS TO CLOSING

12.1 It is a condition to Seller's obligation to proceed to Closing that, as of the Closing Date

(a) all of Buyer's representations and warranties set forth in Section 7.1 are true and correct;

(b) Buyer has performed all of its covenants hereunder;

(c) Buyer has delivered the Purchase Price and all other documents and other deliveries listed in Section 13;

(d) all other conditions to Seller's obligations to proceed to Closing that are set forth in this Agreement have been satisfied.

12.2 If any condition to Seller's obligations hereunder has not been fulfilled, including any condition not set forth in this Section11, Buyer shall have no obligation to proceed to Closing.

13. DELIVERIES

13.1 Seller's Deliveries at Closing.

On the Closing Date, Seller shall deliver at the Closing the following documents and materials, all of which shall be in form and substance acceptable to Buyer:

(a) The duly executed and acknowledged Deed.

(b) Any instruments reasonably necessary to convey title in the condition required by this Agreement, each of which instrument shall be duly executed and, if necessary, acknowledged.

(c) A non-foreign certification, duly executed by Seller under penalty of perjury, certifying that Seller is not a "foreign person" as defined in or pursuant to Section 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended ("Section 1445"). If Seller shall fail or be unable to deliver the same, then Buyer

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shall have the right to withhold such portion of the Purchase Price as may be necessary, in the reasonable opinion of the Title Company, to comply with Section 1445.

(d) Such other documents as the Title Company may reasonably require to complete the Closing.

13.2 **Buyer's Deliveries at Closing.**

(a) Buyer shall deliver at the Closing the Purchase Price for the Property (plus any additional funds necessary to pay Buyer's share of closing costs and prorations, as hereinafter set forth) with immediately available funds. Such delivery shall be made in a timely manner to allow disbursement of the Purchase Price to Seller at the time of the Closing.

(b) Such other documents as the Title Company may reasonably require to complete the Closing.

14. NOTICES

All notices, approvals and demands required or permitted to be given under this Agreement shall be in writing and personally delivered, sent by United States certified mail, return receipt requested, to the addressee's mailing address set forth below, or sent by telecopy to the addressee's fax number set forth below. Any notice will be effective when actually received or, if mailed as provided herein, on the earlier of actual receipt of two (2) days after the date deposited in the mail.

If to Buyer:

Seattle Public Utilities
PO Box 34018
Seattle, WA 98124-4018

If by Carrier or Delivery: 700 Fifth Avenue, Floor 50
Seattle, WA 98104

Phone: 206-684-
Fax: 206-

If to Seller:

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If to Closing Agent: Escrow Office
Pacific Northwest Title Company of Washington
215 Columbia Street
Seattle, WA 98104-1040

Phone: 206-343-1321
Fax: 206-343-4720

15. GOVERNING LAW; VENUE

This Agreement shall be governed by the law of the State of Washington. Venue for any action arising out of this Agreement shall be in King County, Washington.

16. TIME OF THE ESSENCE; CALCULATION OF TIME PERIODS

16.1 Time is of the essence of this Agreement and of all acts required to be done and performed by either and both of the parties hereto. Any extension of time granted for performance of any obligation to this Agreement shall not be considered an extension of time for the performance of any other obligation under this Agreement.

16.2 Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific Standard Time, unless another ending time is herein specified.

17. COUNTERPARTS

This Agreement may be executed in counterparts and, if so, only when a counterpart is delivered to the Closing Agent, with the signatures of each and every one of the parties constituting the Buyer and Seller, shall it be deemed a binding Agreement.

18. NO ORAL MODIFICATION OR WAIVER

This Agreement may not be changed or amended orally, but only by an agreement in writing. No waiver shall be effective unless given in writing. A waiver of any right or remedy in the

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event of a default shall not constitute a waiver of such right or remedy in the event of any subsequent default.

19. NEGOTIATED UNDERSTANDING

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

20. ATTORNEYS' FEES

In the event of any litigation regarding the rights and obligations under this Agreement, each party shall be responsible for its own attorneys' fees and court costs.

21. GENERAL

This is the entire agreement of Buyer and Seller with respect to the Property and supersedes all prior agreements between them, written or oral. This Agreement may be modified or amended only in writing, and signed by Buyer and Seller. Any waivers under this Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement is for the benefit of, and binding upon, Buyer and Seller and their heirs, personal representatives, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. All exhibits are hereby incorporated into this Agreement.

22. SURVIVAL OF WARRANTIES

The terms, covenants, representations and warranties shall not merge in the deed of conveyance, but shall survive closing.

ATTACHMENT 2

BUYER: THE CITY OF SEATTLE, acting by and through its Seattle Public Utilities Department

By _____
Printed Name _____
Title _____
Date _____, _____

SELLER:

By _____

_____
Date _____, _____

Form revised: December 14, 2010

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Julie Crittenden/233-7164	Karen Grove/684-5805

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to purchase certain real property located at 10042 Rainier Avenue South, Seattle, Washington, King County Parcel Identification No. 807300-0538; to execute, accept and record deeds and other necessary and convenient documents and agreements on behalf of the City.

Summary and background of the Legislation:
The ordinance would authorize the Director of Seattle Public Utilities (SPU) to purchase the property at 10042 Rainier Ave South from a willing private seller. The 10,336 square foot parcel contains a portion of lower Taylor Creek and the creek delta in Lake Washington.

Taylor Creek, located in the southeast corner of Seattle, can provide high quality Chinook salmon rearing habitat as well as support sockeye and coho salmon spawning. While the upper portions of the creek flow through forested ravines in park lands, the lower portion is constrained by homes, yards, driveways and roads. SPU recently acquired four parcels between Rainier Ave S and the Lake Washington shoreline that contain 440 feet of lower Taylor Creek, including half of the stream delta. This acquisition has paved the way for substantial habitat and fish passage improvements between Lake Washington and the forested ravines of Lakeridge Park (also known as Deadhorse Canyon). SPU and Seattle Parks and Recreation (Parks) would like to augment SPU's acquisition with the other half of the stream delta to increase the value of this restoration opportunity. This parcel at 10042 Rainier Ave S includes both Lake Washington and Taylor Creek shorelines.

Lower Taylor Creek offers a number of opportunities for restoring stream floodplains, improving fish passage, enhancing stream and shoreline habitat, and creating passive open space and shoreline access. SPU will be replacing the culvert under Rainier Ave S in the next 2-3 years and plans to make stream improvements between that culvert and the upstream residential properties to remove the last barriers to fish passage between the lake and Lakeridge Park. Washington Department of Transportation (WSDOT) plans to restore the lower reach of Taylor Creek and Lake Washington shoreline as mitigation for environmental impacts from the State Route 520 project. The goals of the overall Lower Taylor Creek project are to replace the culvert under Rainier Ave S to restore fish passage, enhance stream, floodplain, and lake shoreline habitat, and increase passive recreation opportunities for Seattle residents.

This acquisition project includes purchasing the entire property, completing a lot boundary adjustment to separate the house portion of the site from the shoreline portion, and then reselling the house portion. The shoreline portion would be incorporated into one large open space park with the adjacent property at 10032-10038 Rainier Ave S. SPU expects to receive $150,000 in King Conservation District (KCD) grant funds to support acquisition of the shoreline portion of the parcel. The grant allocation has been approved by Lake Washington/Cedar/Sammamish

watershed group and by the KCD grant review committee. The KCD Board of Supervisors is expected to approve the grant on September 12. Assuming KCD approval, SPU would request Council recognition of the grant revenue through the 4th Quarter Grant Ordinance in 2011. SPU would recover additional parcel acquisition costs through selling the portion of the site with the house.

This project is included in the 2011-2016 Adopted CIP within the Protection of Beneficial Uses Budget Control Level. While the 2011-2016 Adopted CIP allocated no funding to this project in 2011, sufficient funding exists within the Protection of Beneficial Uses BCL to support the planned property acquisition in 2011, because spending on other allocations within the same BCL is less than expected. Consistent with Ordinance 123442, $775,000 will be administratively transferred to the Taylor Creek Culvert Improvement allocation from the Venema Creek Natural Drainage System allocation, with no net impact to the appropriation authority in the Protection of Beneficial Uses BCL.

Project Name:	**Project I.D.:**	**Project Location:**	**Start Date:**	**End Date:**
Taylor Creek Culvert Improvement	C3353	Taylor Creek at and downstream of Rainier Ave S	1999	December 2015

Please check any of the following that apply:

____ **This legislation creates, funds, or anticipates a new CIP Project.**

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	**Department**	**Budget Control Level***	**Existing 2011 Appropriation**	**New 2011 Appropriation (if any)**	**2012 Anticipated Appropriation**
Drainage and Wastewater Fund 44010	Seattle Public Utilities	C333B Protection of Beneficial Uses	$2.283 million	$0	$4.8 million

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes: No additional appropriations are being sought by this legislation. The negotiated purchase price for this property is $775,000, with up to an additional $30,000 in related expenses (appraisal, appraisal reviews, title costs, and escrow costs, etc.). This purchase will be funded by the existing appropriation in the Protection of Beneficial Uses Budget Control Level that will be transferred administratively into the existing Taylor Creek Culvert Replacement Project, ID C3353, contained in the 2011-2016 Adopted Drainage and Wastewater

Fund Capital Budget. Grant funds are available to support part of the purchase and most of the remaining costs will be offset through sale of the house portion of the property after the lot boundary adjustment.

Once acquired, this property will require expenditures of less than $30,000 for surveying, completing the lot boundary adjustment, going through the surplus process to sell the house parcel, and for landscape management of the property. The 2012 Endorsed CIP allocations of $117,000 in the Taylor Creek Culvert Replacement project will be adequate to pay for the surveying, lot boundary adjustment, and property surplus. Landscape and property maintenance will be covered by the existing Drainage and Wastewater Fund O&M budget, specifically charged to SPU Watershed Science and Strategy Division's urban watershed service number (N731303). These capital and operating costs have been included in the development of the Executive's Proposed 2012 Budget and CIP.

Spending Plan and Future Appropriations for Capital Projects:

Spending Plan and Budget	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**
Spending Plan	$775,000	$117,000	$584,000	$1.3 million	$140,000	0	**$2.916 million**
Current Year Appropriation	$0						
Future Appropriations		$117,000	$584,000	$1.3 million	$140,000	0	**$2.141 million**

Spending Plan and Budget Notes: The Spending Plan was increased during 2011 by approximately $775,000 to enable Seattle Public Utilities to take advantage of this unanticipated acquisition opportunity. Under-expenditures on other Drainage and Wastewater Fund capital projects in the Protection of Beneficial Uses BCL result in sufficient appropriation authority available during 2011 to fund this purchase.

Funding Source:

Funding Source (Fund Name and Number, if applicable)	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**
Drainage and Wastewater Fund - 44010	$775k						
Salmon Recovery Funding Board/King Conservation District grants		$150k*					
Re-sale of the house portion of the site			$600k*				
TOTAL	**$775k**	**$150k***	**$600k***				

* Identifies revenue coming in for/from the project from grants ($150,000) and property sales ($600,000).

Funding Source Notes: This project is funded by the Drainage and Wastewater Fund. A grant from the King Conservation District is providing $150,000 for purchase of the shoreline portion of the parcel. SPU plans to sell the house portion of the site with expected revenue of $600,000 based on an August 2, 2011 appraisal.

Bond Financing Required:

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
Fixed Rate	$598,688	5.5%	30	4/2012	$41,193
TOTAL					

Bond Notes: No bonds will be issued for this project, which would be financed with bonds issued in April 2012. Amounts above are illustrative of the 10042 Rainier Ave S. Acquisition project's contribution to debt service in 2011. On average, 75 percent of Drainage and Wastewater Fund project costs are financed with debt, with the remaining 25% financed with cash. The amount $598,688 in the table above represents 75% of the sum of the acquisition project cost of $775,000 plus 3 percent in issuance costs.

Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2011	2012	2013	2014	2015	2016	Total
Uses							
Start Up	$3,000						**$3,000**
On-going		$4,000	$2,500	$2,500	$2,500	$2,500	**$14,000**
Sources (itemize)	SPU O&M	SPU O&M	SPU O&M	SPU O&M	Parks O&M	Parks O&M	

Operation and Maintenance Notes:
An inspection of the home subject to this legislation shows the structure and contents are in good condition and no improvements would be needed to sell the home. From the time of purchase, SPU would maintain the landscaping on site and provide adequate utility service (i.e., heating) to protect the water pipes from freezing and ensure the interior stays in good condition. Start-up costs in 2011 will pay for securing property and landscape management services for the property.

During 2012, SPU would own the entire parcel, which would require roughly10,000 square feet to be maintained at a cost of $4,000. It is assumed that the house parcel would be sold by the first half of 2013. After the house portion is sold, SPU would maintain the landscaping on the shoreline portion of the parcel only, at a cost of $2,500 in 2013 and 2014. SPU and Parks plan to transfer ownership of the property to Parks after the improvement project is completed at the end of 2014. In 2015 and beyond, maintenance costs would be covered by Parks.

There is no opportunity to implement the LEED Silver standard.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**

No

b) **What is the financial cost of not implementing the legislation?**

No costs to the City. Loss of $150,000 in grant funding.

c) **Does this legislation affect any departments besides the originating department?**

The Seattle Parks and Recreation Department will ultimately own the parcel and operate the area as passive open space. The area will need landscaping maintenance and litter control, estimated at $2,500 in staff costs per year. Currently the Friends of Deadhorse Canyon are very active in stewardship of upstream areas on Taylor Creek and we would like to involve them in this area as well.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

SPU's Asset Management Committee evaluated three options to protect the creek delta and improve habitat and open space. The options included: do nothing; seek conservation easements or other "less-than-fee" options; or outright purchase.

The option to "do nothing" was dismissed as there is $150,000 in grant funds allocated for this project. In addition, SPU felt that the small amount of ultimate cost to the utility, after revenue from grant funds and resale of the house, were well worth the increased benefits to Seattle residents and the ecosystem from purchase of the property.

A conservation easement was considered. However, the owner is interested in selling the property which was purchased as an investment and not a long term home. SPU asked the owner about acquisition of the shoreline portion of the site only, but he was not interested in selling less than the entire parcel. With an easement, we would also be limited in terms of what restoration could be accomplished since the homeowner would have significant influence over what kind of restoration activities would occur.

SPU has the maximum flexibility for restoration work through purchasing the land. SPU's plan is to purchase the property, complete a lot boundary adjustment to place the shoreline portion of the parcel into city ownership, and then resell the portion of the parcel with the home. We believe this is the best way to accomplish the restoration goals with minimizing the ultimate costs of acquisition.

e) **Is a public hearing required for this legislation?**

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

Yes.

h) Other Issues:

None.

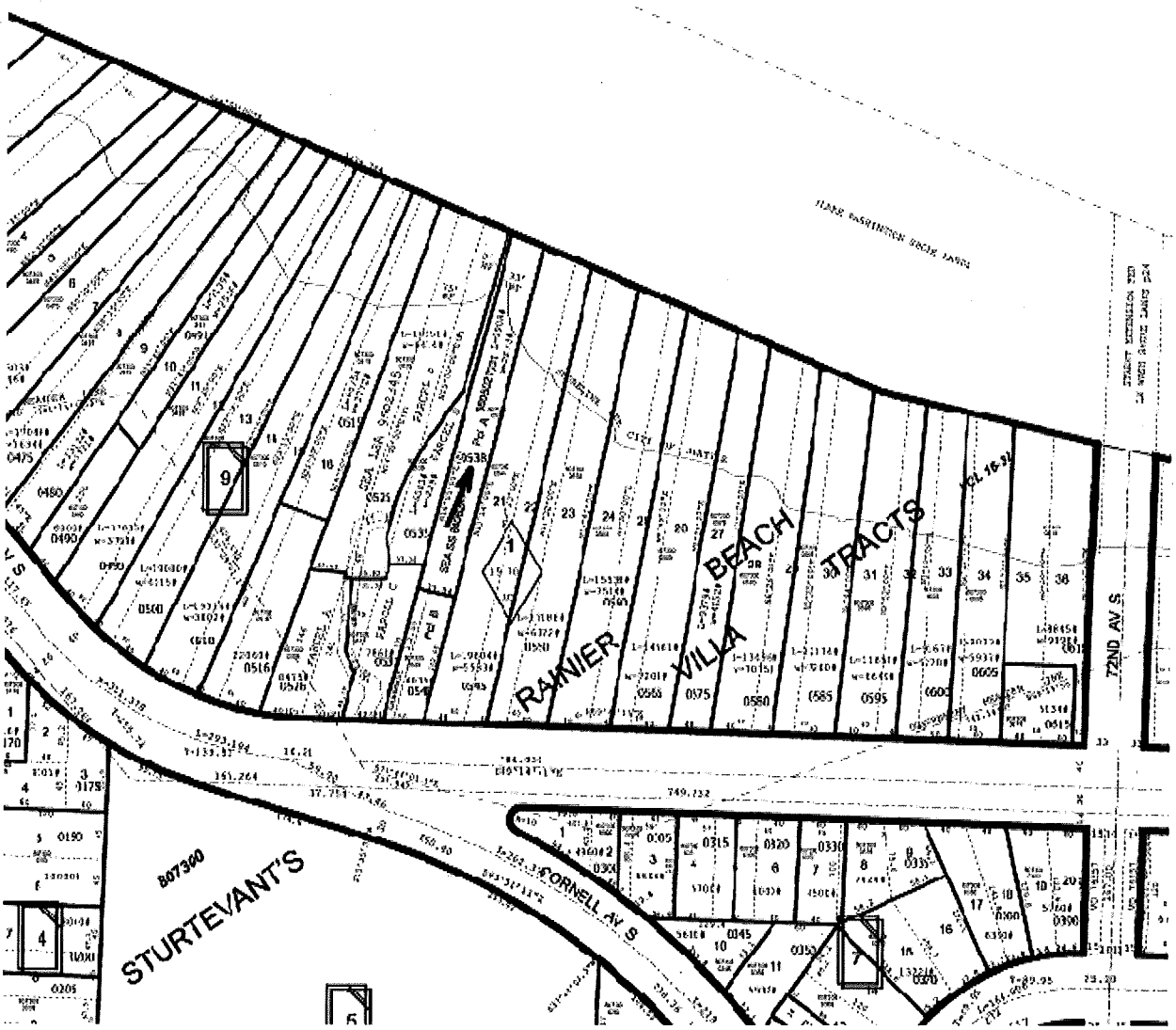
List attachments to the fiscal note below:

ATTACHMENT A: PARCEL MAP WITH PROPERTY TO BE ACQUIRED IDENTIFIED

ATTACHMENT A

PARCEL MAP WITH PROPERTY TO BE ACQUIRED IDENTIFIED

Attachment: Parcel map with property to be acquired identified. Seattle Public Utilities owns the properties immediately to the west at 10032-10038 Rainier Ave S.



City of Seattle
Office of the Mayor

September 13, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that would authorize the purchase of 10042 Rainier Ave S. from a willing seller. This purchase would augment a property acquisition by SPU last year and put the stream mouth and delta of Taylor Creek entirely in public ownership.

Taylor Creek, located in southeast Seattle, can provide high quality Chinook salmon rearing habitat and support sockeye and coho salmon spawning. While the upper portions of the creek flow through forested ravines in park lands, the lower part is constrained by homes, yards, driveways and roads. In addition, fish can only access a few hundred feet of stream due to fish passage barriers. SPU recently acquired four parcels between Rainier Ave S. and the Lake Washington shoreline that contain 440 feet of lower Taylor Creek. This acquisition paved the way for substantial habitat and fish passage improvements between Lake Washington and the forested ravines of Lakeridge Park which are planned for 2014-2015. SPU, working with the Seattle Parks and Recreation Department, can increase project benefits and design flexibility by acquiring the remainder of the stream delta.

SPU plans to purchase the parcel, complete a lot boundary adjustment to retain the lower stream and shoreline in public ownership, and sell the remainder of the parcel with the house. Grant funds are available for the shoreline and creek portion of the property. Additional parcel acquisition costs will be recovered through selling the portion of the site with the house.

The restoration of lower Taylor Creek supports the City's environmental sustainability efforts by improving habitat and increasing habitat access by migratory fish. Thank you for your consideration of this legislation. Should you have questions, please contact Julie Crittenden at 233-7164.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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Seattle, WA 98124-4749

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mike.mcginn@seattle.gov

STATE OF WASHINGTON – KING COUNTY

--ss.

277512 No. 123722,723,724,725,726

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCE

was published on

10/20/11

The amount of the fee charged for the foregoing publication is the sum of $ 88.73, which amount has been paid in full.

Subscribed and sworn to before me on

10/20/11

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. PATZER
COMMISSION EXPIRES
NOTARY
PUBLIC
OCT 24 2011
STATE OF WASHINGTON

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on October 3, 2011, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 123722

AN ORDINANCE related to the enforcement of the City's sick and safe time regulations, increasing appropriations in the 2011 Adopted Budget for the Seattle Office for Civil Rights; and creating a position in the Seattle Office for Civil Rights; all by a three-fourths vote of the City Council.

ORDINANCE NO. 123723

AN ORDINANCE granting Grange Insurance Association permission to maintain and operate a skybridge over and across the alley between 2nd Avenue and 3rd Avenue, north of Cedar Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123724

AN ORDINANCE relating to Seattle Public Utilities; authorizing the transfer of approximately 173 acres located in Sections 30, 31, and 32, Township 22 North, Range 8 East W.M., to the Muckleshoot Indian Tribe in satisfaction of the City's obligations under the Cedar River Settlement Agreement; and declaring said property to be surplus to the City's needs and not required for continued utility needs.

ORDINANCE NO. 123725

AN ORDINANCE relating to the Technology Matching Fund Program; making allocations and authorizing implementation of certain Technology Matching Fund projects in 2011; providing that 2011 appropriations for the Technology Matching Fund from the Cable Television Franchise Subfund and from the Information Technology Fund shall automatically carry forward into the 2012 fiscal year; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123726

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to purchase certain real property located at 10042 Rainier Avenue S., Seattle, Washington, King County Parcel Identification No. 807300-0538; to execute, accept and record deeds and other necessary and convenient documents and agreements on behalf of the City.

Date of publication in the Seattle Daily Journal of Commerce, October 20, 2011.

10/20(277512)